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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,893	02/09/2001	Kent Jorgensen	0459-0554P	3281

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EXAMINER

KISHORE, GOLLAMUDI S

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 09/04/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/781,893

Applicant(s)  
Jorgensen

Examiner  
Gollamudi Kishore

Art Unit  
1615



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jun 24, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above, claim(s) 12, 13, 22, and 25-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14-21, 23, and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 6) ☐ Other:

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### **DETAILED ACTION**

1. Applicant's election with traverse of Group I and species in claims 1-24 in Paper No. 6 is acknowledged. The traversal is on the ground(s) that there would no serious burden. This is not found persuasive because as already pointed out before, instant claims are drawn to multitudes of lipid derivatives themselves and the drug delivery systems based on those derivatives and the classification of the groups is entirely different. The examiner is required to show one way distinctiveness between the groups and this has been done so. With regard to the species election requirement, applicant has not placed on record that the species set forth are obvious variants.

Claims 12-13 and 22 (containing the second drug) which belong to species b) (see page 3 of previous action) have been inadvertently included in species a); these have been withdrawn from consideration and coupled with species b).

The requirement is still deemed proper and is therefore made FINAL.

Claims included in the prosecution are 1-11, 14-21 and 23-24.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Claims 1-11, 14-21 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kozak (6,166,089) of record in combination with Janjic (6,229,002) and Vermehren (BBA, 1998) of record.

Kozak discloses phospholipid prodrugs wherein the carbon 1 of the glycerol has an aliphatic chain and the carbon 2 has an organic radical and carbon 3 has a phosphatidyl group. According to Kozak the organic radical is released by phospholipase A2 present in the pathological tissue (note the abstract, col. 4, line 41 through col. 11, line 9, Examples and claims).

What is lacking in Kozak is the inclusion of a lipopolymer and the administration of the composition in the form of liposomes.

Janjic while disclosing lipid constructs containing PDGF teaches the several advantages of administration of the composition in the form of liposomes and the attachment of PEG to the liposomal surface to shield the liposomal complex from blood proteins and thereby enable it to circulate for extended periods in the blood. According to Janjic, the prodrug is on the outside surface of the liposomes (note the abstract, col. 25, line 5 through col. 28, line 67).

Vermehren while disclosing liposomes containing PEG teaches that PEG not only provide steric hindrance which leads to a decrease in the adsorption and interaction of plasma degrading proteins with the liposomal surface, but also enables PLA2 to have increased catalytic activity on the phospholipid containing liposomes. Based on their

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studies, Vermehren suggest that one can design and optimize the in vivo degradation of drug loaded liposomes at certain sites, e.g., in extravascular inflammatory tissue due to an enhanced local concentration of the active PLA2 and an accumulation of polymer-grafted liposomes in such tissue (note pages 31-34).

The use of polymer (PEG) containing liposomes for the delivery of the prodrug of Kozak would have been obvious to one of ordinary skill in the art because the advantages of the liposomes and the ability of PEG to prolong the circulation time of the liposomes and increasing their susceptibility to PLA2 in the host pathological tissue and thereby increasing the release of the drug attached to the carbon 2 of the phospholipid in Kozak.

The reference of Janjic (5,859,228) which teaches the attachment of the drug to the phospholipid or glyceride (a prodrug) and further incorporation of the prodrug in the lipid bilayer of the liposome is cited of interest (note col 15, line 61 through col. 16, line 23).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *G.S. Kishore* whose telephone number is (703) 308-2440.

The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M. The examiner can also be reached on alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, T.K. Page, can be reached on (703)308-2927. The fax phone number for this Group is (703)305-3592.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [thurman.page@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1235.



Gollamudi S. Kishore, Ph. D

Primary Examiner

Group 1600